

MONTANA

**MEDICAL
ASSOCIATION**

EXHIBIT. 1
DATE 3-23-07
SB 312

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March 23, 2007

**TO: HOUSE BUSINESS AND LABOR COMMITTEE
CHAIRMAN, REPRESENTATIVE SCOTT MENDENHALL**

Attached is information regarding SB 312, An Act Prohibiting Economic Credentialing in Exchange for Hospital or Medical Staff Privileges; Providing Definitions; and Amending Section 50-5-105 MCA.

Kurt T. Kubicka, M.D.
Chair, Committee on Legislation and Litigation

Contact: Beda Lovitt, Esq. 431-4937

- **Hospitals use economic credentialing to suppress competition and steer patients to themselves.** A hospital engages in "economic credentialing" when it conditions physicians' staff privileges on economic considerations that *have nothing to do* with professional qualifications or competence. For example, a hospital employing economic credentialing frequently will not grant privileges to a physician if: (1) the physician invests in a competing facility and/or; (2) the physician does not refer his/her patients exclusively to the hospital. Hospitals use economic credentialing to increase their bottom lines by suppressing competition and coercing patient referrals.
 - **Hospitals use their power to grant privileges to leverage physician decision-making.** Most physician practices cannot survive without hospital privileges. A physician must have privileges to treat hospitalized patients and to gain admittance to managed care provider panels. Economic credentialing sends a clear message to physicians: either send us your patients and don't compete with us or lose your privileges and your patients.
 - **Economic credentialing hurts patient access by preventing the development of high quality facilities.** Many of the independent outpatient facilities that hospitals want to thwart often provide higher quality services than competing hospital outpatient departments. This is because these independent facilities regularly perform a specific set of procedures using specialized equipment and staff. Frequently, these high quality facilities cannot be developed without physician commitment and investment. When economic credentialing prevents the creation of these independent facilities, patients are the ultimate losers because they are denied a high-quality alternative to the hospital.
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- **Economic credentialing suppresses competition when competition is essential to the health care industry.** Hospitals use economic credentialing to suppress competition. Yet competition is exactly what the health care industry needs. According to the Federal Trade Commission/Department of Justice in their July 2004 report "Improving Health Care: A Dose of Competition," "...vigorous competition promotes the delivery of high quality, cost-effective health care."
 - **Economic credentialing raises health care costs.** Independent outpatient facilities like ambulatory surgery centers (ASCs) save money when compared to hospital outpatient departments. A 2005 study by the Moran Company found that: (1) claims for the same service cost Medicare an average of \$320 less when the service was furnished in an ASC as compared to a hospital outpatient department; and (2) procedures performed in ASCs in 2005 will cost the Medicare program \$1.1 billion less than if the same procedures had been performed in hospital outpatient departments.

- **Economic credentialing restricts patient choice.** Economic credentialing restricts patient choice because the physician cannot refer the patient to any facility other than the hospital, even if other outpatient facilities may be more preferable to the patient in terms of quality, convenience, cost, etc. *The patient expects to have the final say as to where, when, and how he or she will receive treatment, not a hospital administrator.*
- **Economic credentialing may violate the Internal Revenue Code.** The Internal Revenue Code requires nonprofit hospitals to have an open staff, i.e., "admission to the medical staff must be open to all qualified physicians in the area, consistent with the size and nature of the facilities." Hospitals that engage in economic credentialing may violate this "open staff" requirement.


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Organized Medical Staff Section (OMSS)

Economic Credentialing

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Issues and Answers For further information, contact Department of Organized Medical Staff Services or the Health Law Division.

Definition

Economic credentialing is the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges. (AMA Policy H-230.975)

History

Current economic trends in healthcare have caused hospitals to base credentialing decisions on the level of a physician's referrals to that hospital. Some hospitals have established "conflict of interest" policies or "loyalty oaths" to ensure that physicians will refer their patients to that hospital or risk losing their hospital privileges. Through these policies or "loyalty oaths", some hospitals have refused to grant staff privileges to physicians who own, have financial interests in or have leadership positions with healthcare entities or refer patients to competing healthcare entities.

AMA Action: The AMA opposes the use of economic criteria unrelated to patient care to grant privileges. In December 1999 the AMA asked the Office of Inspector General (OIG) to issue a fraud alert on this emerging practice. The AMA had several conferences with the OIG over the ensuing two years regarding the request and in September 2002 submitted another request for a fraud alert. The AMA met with the OIG in November 2002 to develop the solicitation for comments published in the December 9, 2002, *Federal Register*. In the December notice, the OIG asked the public to comment on certain credentialing practices including:

1. Whether hospital privileges are "remuneration"?
2. What are the implications of a hospital's denial of privileges to a physician who competes with the hospital?
3. Should the exercise of discretion by the hospital affect the analysis under the anti-kickback statute?
4. Can privileges ever be conditioned on referrals, other than minimums necessary for clinical proficiency?
5. What is the effect of credentialing restrictions that apply only to members of a group practice?

The AMA's September, 2002 request to the OIG and its response to the solicitation for comments can be accessed at: http://www.ama-assn.org/ama1/pub/upload/mm/395/sept_itr_oig.doc and http://www.ama-assn.org/ama1/pub/upload/mm/395/rev_oig_comments.doc

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Strategies

1. Develop bylaw provisions which clearly articulate membership and privilege criteria, including a provision prohibiting economic credentialing.

Medical staff membership and privileges may be granted, continued, modified, or terminated by the Board only upon recommendation of the medical executive committee for reasons directly related to quality of patient care and other provisions of the medical staff bylaws, according to the procedures set forth in these bylaws. Under no circumstances shall economic criteria unrelated to quality of care be used to determine qualification for initial or continuing medical staff membership or privileges. (AMA Physicians Guide to Medical Staff Organization Bylaws, 2nd Edition)

2. Encourage medical staff involvement in the development of medical staff development plans and strategic planning activities.
3. Encourage medical staff involvement in the development of conflict of interest policies.
4. Encourage membership in AMA and the Organized Medical Staff Section (OMSS) and in order to raise awareness of the many issues affecting medical staffs and to utilize the legislative and advocacy activities. Notify the AMA of economic credentialing practices or policies implemented by hospitals.
5. Establishment of a dispute/conflict resolution process in the medical staff bylaws whereby the medical staff and hospital governing body can discuss and resolve issues that affect the medical staff.

Last updated: Oct 14, 2004
Content provided by: Janie Fleszar

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10/19/06

STATE LAWS PROHIBITING ECONOMIC CREDENTIALING

According to the literature, eleven states currently have laws prohibiting economic credentialing in one form or another.

For information purposes, the AMA defines economic credentialing as "the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges. (AMA Policy H-230.975)

The states having such statutes are:

1. California: CAL. WELFARE AND INSTITUTIONS CODE § 14087.28

14087.28. (a) A hospital contracting with the Medi-Cal program pursuant to this chapter shall not deny medical staff membership or clinical privileges for reasons other than a physician's individual qualifications as determined by professional and ethical criteria, uniformly applied to all medical staff applicants and members. Determination of medical staff membership or clinical privileges shall not be made upon the basis of any of the following:

(1) The existence of a contract with the hospital or with others.
(2) Membership in, or affiliation with, any society, medical group, or teaching facility, or upon the basis of any criteria lacking professional justification, such as any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code.

(b) The special negotiator may authorize a contracting hospital to impose reasonable limitations on the granting of medical staff membership or clinical privileges to permit an exclusive contract for the provision of pathology, radiology, and anesthesiology services, except for consulting services requested by the admitting physician.

2. Colorado: COLO. REV. STAT., Title 25, § 25-3-103.7

25-3-103.7. Employment of physicians - when permissible - conditions.

Pertinent portions of Colorado's law (apparently adopted out of concern for hospitals employing physicians):

(5) The medical staff bylaws or policies or hospital policies of any hospital which employs physicians shall not discriminate with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the hospital. Any hospital that discriminates with regard to credentials or staff privileges on the basis of whether a physician is an employee of, a physician with staff privileges at, or a contracting physician with, the hospital shall be deemed to have violated hospital standards of operation and may be held liable to the

physician for such violations, including proximately caused damages. This subsection (5) shall not affect the terms of any contract or written employment arrangement which provides that the credentials or staff and clinical privileges of any practitioner are incident to or coterminous with the contract or employment arrangement or the individual's association with a group holding the contract.

* * * * *

(7) The medical staff bylaws or policies or hospital policies of any hospital that employs physicians shall contain a procedure by which complaints by physicians alleging a violation of subsection (3), (4), or (5) of this section may be heard and resolved, which procedure shall ensure that the due process rights of the parties are protected. A physician who believes he or she has been the subject of a violation of subsection (3), (4), or (5) of this section has a right to complain and request review of the matter pursuant to such procedure.

(8) Nothing in this section shall preclude a physician or a patient from seeking other remedies available to the physician or to the patient at law or in equity.

3. District of Columbia: D.C. CODE ANN., § 44-507

§ 44-507. Standards for clinical privileges and staff membership; anticompetitive practices prohibited.

(a) The accordence and delineation of clinical privileges shall be determined on an individual basis and commensurate with an applicant's education, training, experience, and demonstrated current competence. In implementing these criteria, each facility and agency shall formulate and apply reasonable, nondiscriminatory standards for the evaluation of an applicant's credentials. As part of its overall responsibility for the operation of a facility or agency, the governing body, or designated persons so functioning, shall ensure that decisions on clinical privileges and staff membership are based on an objective evaluation of an applicant's credentials, free of anticompetitive intent or purpose. Whenever possible, the credentials committee and other staff who evaluate and determine the qualifications of applicants for clinical privileges and staff membership shall include members of the applicant's profession. The credentials committee shall accept the District of Columbia's uniform credentialing form as the sole application for a healthcare provider to become credentialed or recertified. ✓

(b) The following are not valid factors for consideration in the determination of qualifications for staff membership or clinical privileges:

(1) An applicant's membership or lack of membership in a professional society or association;

(2) An applicant's decision to advertise, lower fees, or engage in other competitive acts intended to solicit business;

(3) An applicant's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services on other than a fee-for-service basis;

(4) An applicant's support for, training of, or participation in a private group practice with members of a particular class of health professional;

(5) An applicant's practices with respect to testifying in malpractice suits, disciplinary actions, or any other type of proceeding; and

(6) An applicant's willingness to send a certain amount of patients/clients who are in need of the services of a facility or agency to a particular facility or agency; provided, that this last restriction shall not apply to public facilities and agencies.

referred

Each facility or agency shall formulate procedures to ensure that the foregoing factors play no part when decisions regarding clinical privileges and staff membership are made. In any action brought by an individual against a facility or agency regarding a determination of clinical privileges or staff membership, the facility or agency shall have the burden of proving that none of these considerations were a factor in the determination.

(c) No provision of District of Columbia law, institutional or staff bylaw of a facility or agency, rule or regulation, or practice shall prohibit qualified advanced practice registered nurses, podiatrists, or psychologists from being accorded clinical privileges and appointed to all categories of staff membership at those facilities and agencies that offer the kinds of services that can be performed by either members of these health professions or physicians.

(d) General and family practitioners who have demonstrated a current competence in the performance of particular services or procedures shall not be discriminated against with respect to staff membership or the accordance and delineation of clinical privileges on account of their type of practice.

(e) If a facility or agency offers the types of services that can be performed by physician assistants or other, analogous health professional assistants, it shall establish clearly defined and objective procedures for the processing and evaluation of requests by members of these groups to provide such services at the facility or agency.

(f) Whenever a health professional submits a completed application for staff membership or clinical privileges to a facility or agency, that facility or agency shall have 120 calendar days to grant or deny the application. No facility or agency may deny such an application, terminate, or reduce the rights and responsibilities attending the staff membership of a health professional, or reduce, suspend, revoke, or refuse to renew his or her clinical privileges, without providing him or her with the following minimum procedural protections:

(1) A contemporaneous written explanation containing the explicit reasons for taking the action;

- (2) Reasonable advance notice of the right to a fair hearing which would afford the applicant an opportunity to adequately prepare a rebuttal to the stated reasons for the action;
- (3) A fair hearing, including the right to present evidence and call witnesses in his or her behalf;
- (4) The right to have retained counsel present at the hearing if the facility or agency is represented by counsel at the hearing;
- (5) A written decision containing the explicit reasons for taking the action and substantially based on the evidence produced at the hearing; and
- (6) Access to a complete record documenting all preliminary and final decisions and proceedings related to the decisions.

4. **Idaho: IDAHO CODE, § 41-3920.**

41-3920. DISCRIMINATION AGAINST HEALTH PROFESSIONALS ASSOCIATED WITH MANAGED CARE ORGANIZATIONS. It shall be unlawful for any health service institution or associations of health professionals to exclude other health professionals from working privileges, membership, or association solely on the basis that such other person is employed by or contracts with a managed care organization pursuant to this chapter.

5. **Illinois: ILL. REV. STAT. Ch. 210, 85/2(b)**

Sec. 2. Purpose; findings.

(a) The purpose of this Act is to provide for the better protection of the public health through the development, establishment, and enforcement of standards (1) for the care of individuals in hospitals, (2) for the construction, maintenance, and operation of hospitals which, in light of advancing knowledge, will promote safe and adequate treatment of such individuals in hospital, and (3) that will have regard to the necessity of determining that a person establishing a hospital have the qualifications, background, character and financial resources to adequately provide a proper standard of hospital service for the community.

(b) The Illinois General Assembly finds:

(1) That the citizens of Illinois are not served by the inappropriate use of economic criteria in determining an individual's qualifications for initial or continuing medical staff membership or privileges.

(2) That the inappropriate use of economic criteria in determining an individual's qualifications for initial or continuing medical staff membership or privileges may deprive the citizens of Illinois access to a choice of the health care providers.

(3) That it is in the interest of the people of the State of Illinois to establish safeguards that (i) require hospitals and hospital based providers to explain to

individual providers the reasons, including economic factors, for credentialing decisions, (ii) allow an opportunity for a fair hearing, and (iii) report economic credentialing to the Hospital Licensing Board for further study. As used in this Section and defined by the American Medical Association, "economic credentialing" means the use of economic criteria unrelated to quality of care or professional competency in determining an individual's qualifications for initial or continuing medical staff membership or privileges.

(Source: P.A. 88-654, eff. 1-1-95.)

5. Louisiana: LA. REV. STAT. ANN.

§1301. Nonprofit hospitals; discrimination prohibited

A. The following words, as used in this Section, shall have the following meanings unless the context otherwise requires:

(1) "Governing body" means the group or the individual ultimately responsible for a hospital's general policies with respect to staff membership and professional privileges and shall include, but not limited to, a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a director or any other official of a hospital with comparable responsibilities.

(2) "Hospital" means an institution for the care and treatment of the sick and injured, equipped with the technical facilities, medical, nursing and other professional and technical personnel necessary for diagnosis and treatment of persons suffering from sickness or injury which requires bed care.

(3) "Medical group practice" means the practice of medicine by physicians, employees or as partners or in groups regardless of the manner in which the fees are paid for services rendered by such physicians.

(4) "Physician" means any person holding a valid certificate to practice medicine issued pursuant to R.S. 37:1274.

(5) "Podiatric physician" means any person holding a valid certificate to practice podiatry issued pursuant to R.S. 37:616.

B. It shall be unlawful for the governing body of a nonprofit hospital which receives local, state, or federal funds to discriminate in granting staff membership to physicians or podiatric physicians; it shall likewise be unlawful to discriminate against any such physician or podiatric physician solely because of his participation in medical group practice subject to Subsection D of this Section and provided that the hospital already has the necessary facilities for the surgical procedure for which application has been made. Nothing in this Section shall be construed to require the governing body of any nonprofit hospital to grant staff membership to any applicant, provided that each such applicant is considered on an individual basis regarding his qualifications, and further provided that the applicant is not discriminated against on the sole basis of being a podiatric physician.

C. It shall be unlawful for the governing body of a non-profit hospital to make the granting or denial of staff membership or professional privilege in the hospital depend solely upon certification, fellowship or membership in a specialty body or medical society.

D. Nothing in this Section shall be construed as prohibiting the governing body of any nonprofit hospital from granting or denying staff membership on basis of individual character, competence, experience and judgment of the physician or podiatric physician seeking staff membership or from requiring the character recommendation of not more than three members of the staff for which membership is sought as a prerequisite to consideration for staff membership.

7. **Massachusetts: MASS. GEN'L L. Ch 111, 51C**

Chapter 111: Section 51C. Applications for staff membership or clinical privileges; discrimination

Section 51C. Each hospital, or other institution, licensed under section fifty-one shall not discriminate against an individual qualified within the scope of his or her license when considering or acting on an application for staff membership or clinical privileges to practice podiatry.

Each application shall be considered solely on the basis of the individual training, current competence, experience, ability, personal character and judgment of the applicant. ✓

8. **Rhode Island: R.I. GEN LAWS § 23-17-53**

§ 23-17-53 Physician contracts. – (a) A hospital, by contract or otherwise, may not refuse or fail to grant or renew medical staff membership or staff privileges, or condition or otherwise limit or restrict medical staff membership or staff privileges, based in whole or in part on the fact that the physician or a partner, associate, or employee of the physician is providing medical or health care services at a different hospital, hospital system, or on behalf of a health plan. Notwithstanding the previous sentence, a hospital may condition or otherwise limit or restrict staff privileges for reasons related to the availability of limited resources as determined in advance by the hospital's governing body. Nor shall a hospital by contract, or otherwise, limit a physician's participation or staff privileges or the participation or staff privileges of a partner, associate, or employee of the physician at a different hospital, hospital system or health plan.

(b) This section does not prevent a hospital from entering into contracts with physicians to ensure physician availability and coverage at the hospital or to comply with regulatory requirements or quality of care standards established by the governing body of the hospital, if contracts, requirements or standards do not require that a physician join, participate in or contract with a physician-hospital organization or similar organization as a condition of the grant or continuation of medical staff membership or staff privileges at the hospital.

(c) This section does not prevent the governing body of a hospital from limiting the number of physicians granted medical staff membership or privileges at the hospital based on a medical staff development plan that is unrelated to a physician or a partner, associate, or employee of a physician having medical staff membership or privileges at another hospital or hospital system.

(d) A contract provision that violates this section shall be void and of no force and effect.

9. Tennessee: TENN. CODE ANN. § 68-11-205, 68-11-227

68-11-205. Practice in healing arts or medicine by partnership, person, association or corporation unauthorized.

Pertinent portions of Tennessee statute (apparently adopted out of concern for hospitals employing physicians):

(7) Employing entities shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, employed physicians relinquish medical staff privileges, or the rights related thereto, upon the commencement of, upon any event during the pendency of, or at the termination or conclusion of, the employment relationship. In any event, nothing hereunder shall be construed as affecting or negating the ability of an employing hospital to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in the medical staff bylaws. Hospitals shall not substitute physician employment contracts for medical staff privileges. Nonemployed and employed physicians holding staff privileges at a hospital which is an employing entity, or hospitals on which employed physicians hold staff privileges that are affiliates of employing entities, shall enjoy the same privileges, rights and protections with respect to medical staff membership. Employment of a physician shall not affect any other physician's medical staff privileges. Physicians who hold membership on medical staffs at a hospital which is an employing entity, or a hospital on which employed physicians hold staff privileges that are affiliates of employing entities, shall be provided with the rights and protections, including rights of self-governance, afforded by the applicable state licensing board, and, when accredited, the accrediting entity or agency.

68-11-227. Prohibited hospital actions.

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(b) The termination of an oral or written contract between a hospital and a hospital-based physician shall not result in loss of medical staff privileges, through contractual provisions or hospital policy, unless there is a written contract that contains a section separately executed by the parties that

provides for the loss of medical staff privileges:

(1) If such physician is provided with at least six (6) months' written notice of the termination of the contract; and

(2) If such physician either:

(A) Provides medical services under the contract to a department of the hospital that has a closed staff and will have a closed staff after termination of the contract; or

(B) Provides medical services under the contract to a department of the hospital that has an open staff, but will have a closed staff after termination of the contract. In the case of an emergency physician, the notice of termination described in the preceding sentence may be less than six (6) months in order to obtain emergency coverage to satisfy requirements of state licensing rules, accreditation or applicable managed care plans.

(c) As used in this section, "hospital-based physician" means an anesthesiologist, emergency physician, pathologist, or radiologist.

10. Texas: TEX HEALTH AND SAFETY CODE ANN. § 241-1015

§ 241.1015. PHYSICIAN COMMUNICATION AND CONTRACTS. (a) A hospital, whether by contract, by granting or withholding staff privileges, or otherwise, may not restrict a physician's ability to communicate with a patient with respect to:

- (1) the patient's coverage under a health care plan;
- (2) any subject related to the medical care or health care services to be provided to the patient, including treatment options that are not provided under a health care plan;
- (3) the availability or desirability of a health care plan or insurance or similar coverage, other than the patient's health care plan; or

(4) the fact that the physician's staff privileges or contract with a hospital or health care plan have terminated or that the physician will otherwise no longer be providing medical care or health care services at the hospital or under the health care plan.

(b) A hospital, by contract or otherwise, may not refuse or fail to grant or renew staff privileges, or condition staff privileges, based in whole or in part on the fact that the physician or a partner, associate, or employee of the physician is providing medical or health care services at a different hospital or hospital system.

(c) A hospital may not contract to limit a physician's participation or staff privileges or the participation or staff privileges of a partner, associate, or employee of the physician at a different hospital or hospital system.

(d) This section does not prevent a hospital from entering into contracts with physicians to ensure physician availability and coverage

at the hospital or to comply with regulatory requirements or quality of care standards established by the governing body of the hospital.

(e) This section does not prevent the governing body of a hospital from:

(1) limiting the number of physicians granted medical staff membership or privileges at the hospital based on a medical staff development plan that is unrelated to a physician's professional or business relationships or associations including those with another physician or group of physicians or to a physician or a partner, associate, or employee of a physician having medical staff membership or privileges at another hospital or hospital system; or

(2) limiting the ability of hospital medical directors to contract with or hold medical staff memberships or clinical privileges at different hospitals or hospital systems provided that such limitations do not extend to the medical directors' professional or business relationships or associations including those with another physician, group of physicians, or other health care providers, other than hospitals or hospital systems.

(f) A contract provision that violates this section is void.

(g) In this section, "health care plan" has the meaning assigned by Section 843.002, Insurance Code, and "hospital medical directors" means physicians who have been employed by or are under contract with a hospital to manage a clinical department or departments of the hospital.

11. Virginia: VA. CODE ANN. § 32.1-134.1

§ 32.1-134.1. When denial, etc., to duly licensed physician of staff membership or professional privileges improper.

It shall be an improper practice for the governing body of a hospital which has twenty-five beds or more and which is required by state law to be licensed to refuse or fail to act within sixty days of a completed application for staff membership or professional privileges or deny or withhold from a duly licensed physician staff membership or professional privileges in such hospital, or to exclude or expel a physician from staff membership in such hospital or curtail, terminate or diminish in any way a physician's professional privileges in such hospital, without stating in writing the reason or reasons therefor, a copy of which shall be provided to the physician. If the reason or reasons stated are unrelated to standards of patient care, patient welfare, violation of the rules and regulations of the institution or staff, the objectives or efficient operations of the institution, or the character or competency of the applicant, or misconduct in any hospital, it shall be deemed an improper practice.

Any physician licensed in this Commonwealth to practice medicine who is aggrieved by any violation of this section shall have the right to seek an injunction from the circuit court of the city or county in which the hospital alleged to have violated this section is located prohibiting any such further violation. The provisions of this section shall not be deemed to impair or affect any other right or remedy; provided that a violation of this section shall not constitute a violation of the provisions of this article for the purposes of § 32.1-135.

Medical Staff Conflict of Interest Policy Summary Points

- This is a draft policy and is not in effect.
- A practitioner with any financial interest in a competing entity may be ineligible for any one or more of the following:
 - Membership on the board
 - Medical staff leadership positions
 - Financial relationships with SPH or its affiliates
 - Appointment to any particular category of the medical staff
 - Appointment or reappointment to the medical staff of SPH
 - Other relationships with or benefits from SPH as determined by the board
- Competing entities include hospital, ambulatory surgery center, imaging center, other diagnostic center, pain management clinic, cardiac catheterization facility, oncology center, birthing center, durable medical equipment company, home health agency, urgent care center, outpatient rehabilitation center
- Services provided within a practitioner's office and billed under the same provider number used to bill for the practitioner's professional services are not included under the definition of facility.
- If the board determines the practitioner is ineligible based on the policy, the practitioner will have an opportunity to meet with a committee of three board members to discuss request for reconsideration.
- The policy shall not apply to individuals who are appointed to the medical staff and who have a financial relationship with a competing entity on or prior to June 1, 2006 except that it shall apply if, on or after such date, the services available in such entity are expanded.

John.

JOINT CONFERENCE COMMITTEE

AGENDA

Monday
January 8, 2007
5:30 PM

Medical Staff Conference Room

AGENDA	ACTION INFORMATION	PRESENTER
1. Discussion Draft Medical Staff Conflict of Interest Policy	Information	Scott Pargot, D.O. Chief of Staff

Scott Pargot, D.O. Chair
Jack McMahon, M.D.
Tom Weiner, M.D.
Max Iverson, M.D.
Craig Wilkerson, M.D.
Brian Weitz, M.D.
Dick Brown
Rick Hays
Lorretta Lynde
Dave Lechner, M.D.
Timothy Grossman, M.D.
John Solheim

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DISCUSSION DRAFT

ST. PETER'S HOSPITAL

POLICY ON MEDICAL STAFF CONFLICTS OF INTEREST

1. Preamble

This Policy has been developed to reaffirm the charitable mission and interest of St. Peter's Hospital ("St. Peter's") to provide high quality health care services to all people in St. Peter's service area without regard to an individual's ability to pay for services. It is recognized that some forms of competition may significantly affect St. Peter's ability to provide ongoing high quality health services in the region. Financial Relationships with Competing Entities and other Interests Potentially Adverse to St. Peter's may also compromise the ability of those who have such relationships to fulfill their fiduciary duties. Based on the Board of Directors' legal authority under Montana law, as well as the Board's fiduciary responsibility to carry out the charitable purposes of the corporation, the following Policy is adopted.

2. General Policy

- (a) A practitioner who has a Financial Relationship with a Competing Entity or Interest Potentially Adverse to St. Peter's may be determined by the Board to be ineligible for any one or more of the following:
- (i) membership on the Board;
 - (ii) Medical Staff leadership positions;
 - (iii) Financial Relationships with St. Peter's or its Affiliates;
 - (iv) appointment to any particular category of the Medical Staff;
 - (v) appointment or reappointment to the Medical Staff of St. Peter's; or
 - (vi) other relationships with or benefits from St. Peter's as determined by the Board.

- (b) Notwithstanding the above, nothing in this Policy shall condition eligibility ~~for~~ Medical Staff appointment or clinical privileges, in whole or in part, on the ~~fact~~ that a practitioner, or a partner, associate, or employee of the practitioner, ~~is~~ providing medical or health care services at a different hospital or health system ~~or~~, or referring patients to or otherwise generating business for any other entity ~~or~~. Nothing in this Policy shall prohibit any practitioner from being appointed to ~~the~~ Medical Staff of any other Facility or exercising clinical privileges at any other ~~Facility~~ Facility.

3. Definitions

The following terms shall have the following meanings as used in this Policy:

- (a) "Affiliate" means any corporation which controls, is controlled by, or is under common control with St. Peter's.
- (b) "Board" shall mean the Board of Directors of St. Peter's.
- (c) "Competing Entity" means a Health System or Facility that (i) offers the same or similar services as St. Peter's or any of its Affiliates to individuals in the Service Area of St. Peter's and (ii) is not owned or controlled in whole or in part by St. Peter's or its subsidiaries. Entities which offer only services that are not offered by St. Peter's or its affiliates are not Competing Entities, even if St. Peter's or its subsidiaries subsequently offer the service.
- (d) "Facility" means any hospital, ambulatory surgery center, imaging center, other diagnostic center, pain management clinic, cardiac catheterization facility, oncology center, birthing center, durable medical equipment company, home health agency, urgent care center, outpatient rehabilitation center or similar entity which (i) is licensed as a Facility by applicable state authorities and (ii) bills a fee for facility, technical or other services separate from the professional services of practitioners who perform services at the Facility. Services provided within a practitioner's office and billed under the same provider number used to bill for the

practitioner's professional services are not included under the definition of Facility.

- (e) "Family Member" shall include the practitioner's parents, children, spouse and siblings.
- (f) "Financial Relationship" shall include Ownership or Investment Interests and Compensation Arrangements. Both direct and indirect Financial Relationships are covered by this Policy.
 - (i) An Ownership or Investment Interest may be through equity, debt, or other means.
 - (ii) A Compensation Arrangement shall mean any arrangement pursuant to which remuneration is paid, directly or indirectly, from the entity to the individual in question. A loan at fair market interest rates which is not subject to forgiveness shall not constitute a Compensation Arrangement.
 - (iii) A direct Financial Relationship is one that is between the practitioner in question and the Competing Entity.
 - (iv) An indirect Financial Relationship is one that is between the Competing Entity and either: (A) the practitioner's employer, (B) the practitioner's Family Member, or (C) any entity in which the practitioner or his or her Family Member serves as a director or officer, or in which the practitioner holds an Ownership or Investment Interest.
 - (v) Medical Staff appointment and/or clinical privileges at a Facility do not, in and of themselves, constitute a Financial Relationship.
- (g) "Health System" means two or more organizations or entities under common ownership or control which include at least one Facility.
- (h) "Interest Potentially Adverse to St. Peter's" shall include:
 - (i) litigation brought by a practitioner or his or her Family Member against St. Peter's or any of its Affiliates;

- (ii) performing peer or utilization review with respect to services rendered ~~at~~ St. Peter's for third-party payors;
- (iii) acting as a consultant or expert witness for any malpractice plaintiff ~~or~~ attorney for the same; or
- (iv) Financial Relationships with Vendors.
- (i) "Medical Staff Leaders" include Medical Staff officers, Department Chair~~s~~, Division Chiefs, committee chairs or members and medical directors.
- (j) "Service Area" shall be defined by the Board from time to time. A map of the ~~the~~ current Service Area is attached to this Policy.
- (k) "Vendor" shall mean any entity selling or leasing goods or services to St. Peter's ~~s~~ or any of its Affiliates, including, but not limited to, pharmaceutical companies~~s~~, medical equipment companies, information systems companies, or consultin~~g~~ firms.

4. Disclosure

All practitioners seeking to apply for appointment to the Medical Staff and all current Medical Staff appointees shall make a complete and accurate disclosure of Financial Relationships with Competing Entities and Interests Potentially Adverse to St. Peter's on a form and pursuant to procedures developed by the Board at the time of appointment and reappointment to the Medical Staff and at any other time when they enter into a new Financial Relationship with Competing Entities or Interest Potentially Adverse to St. Peter's.

5. Factors to Be Considered by the Board in Ineligibility Determinations

In determining whether a Financial Relationship with a Competing Entity or Interest Potentially Adverse to St. Peter's would render a practitioner ineligible for one or more of the items referred to in Section 2(a), the Board shall consider the following factors:

- (a) Is the Financial Relationship or Interest likely to influence the practitioner to refer to the entity or service in question?
- (i) Direct Ownership and Investment Interests will be presumed to influence the practitioner.
 - (ii) Compensation Arrangements will be presumed to influence the practitioner if:
 - A. the compensation is in return for full-time services by the practitioner;
 - B. the amount the practitioner receives varies based on the volume or value of patients referred to, or business otherwise generated for, the Competing Entity or service; or
 - C. the Competing Entity has the ability, contractually or otherwise, to require the practitioner to refer to it.
 - (iii) Other types of Compensation Arrangements as well as indirect Financial Relationships will be reviewed on a case-by-case basis.
- (b) What, if any, financial impact will the practitioner's Financial Relationship or Interest have on St. Peter's?
- (i) How much revenue has been or is likely to be diverted from St. Peter's as a result of the Financial Relationship or Interest in question? For example, a single room ambulatory surgery center adjacent to the office of a sole practitioner and used by that practitioner only to treat patients with whom the practitioner has a pre-existing relationship may not affect St. Peter's interests to the same extent that a larger ambulatory surgery center with several physician-investors would.
 - (ii) Will the loss of this revenue impair St. Peter's ability to serve the community or fulfill its charitable community service mission?

- (c) Will the Financial Relationship or Interest potentially impair the practitioner's ability to properly fulfill any duties that are part of any relationship that he or she may have with St. Peter's, such as, but not limited to:
 - (i) confidentiality of proprietary business information of St. Peter's?
 - (ii) ER call duties?
 - (iii) peer review, credentialing, utilization review or leadership duties?
- (d) Has the practitioner used or is the practitioner likely to use his or her affiliation with St. Peter's (e.g., any office held at or other relationship with St. Peter's) to market or promote the use of any other Entity?
- (e) If the Board determines that any Financial Relationship with a Competing Entity or Interest Potentially Adverse to St. Peter's may impair the ability of St. Peter's to serve the community or potentially impair a practitioner's ability to properly fulfill any duties that are part of any relationship that he or she may have with St. Peter's, is there a reason to make an exception to the general rule:
 - (i) for categories of practitioners due to special needs of St. Peter's or the people in its Service Area?
 - (ii) in individual cases?
- (f) In applying these factors, the Board may consider whatever information it believes to be credible and relevant to the determination.

6. Process to Be Followed if Practitioner Determined to Be Ineligible

If the Board determines that a practitioner is ineligible after applying the criteria in Section 5, the following procedure will be followed:

- (a) The practitioner will be notified in writing of the determination and the reasons for it by the Board.
- (b) The practitioner shall have 10 days within which to submit a written request to the CEO for reconsideration of the determination.
- (c) The request for reconsideration shall contain such information as the practitioner wishes to submit relevant to the factors considered by the Board.

- (d) The practitioner shall have an opportunity to meet with a committee of three Board members selected by the Chairman of the Board to discuss the request for reconsideration. This meeting shall occur no later than 30 days after receipt of the request for reconsideration. The practitioner shall have the right to be accompanied and advised by his or her counsel at the meeting, but counsel for the practitioner shall not speak on behalf of the practitioner. If the practitioner wishes to have counsel accompany him or her to the meeting, he or she shall inform the CEO of this fact at least five days prior to the meeting so that St. Peter's may arrange to have its counsel present. A record of the meeting shall be kept.
- (e) Within five days after the conclusion of the meeting, the committee shall recommend to the full Board whether or not reconsideration should be granted and the reasons for its recommendation. The Board shall take final action on the matter at its next regular or special meeting.
- (f) If the Board determines, after considering the reconsideration request, that the practitioner is ineligible to be considered for appointment or reappointment, the practitioner shall be so informed in writing and St. Peter's shall not process an application from that practitioner.
- (g) A practitioner who is determined to be ineligible pursuant to the foregoing procedure shall not be entitled to any other hearing or appeal pursuant to the bylaws, policies, rules and regulations, or manuals of St. Peter's or its Medical Staff or otherwise as a result of the ineligibility determination, or as a result of the fact that the practitioner was not appointed or reappointed to the Medical Staff or any category thereof due to ineligibility.
- (h) No report of the ineligibility determination shall be made to the Montana Medical Board or the National Practitioner Data Bank.

7. **Miscellaneous**

- (a) This Policy shall be reviewed periodically by and may be amended at the discretion of the Board.
- (b) In the event of any actual or apparent conflict between (i) the bylaws, policies, rules and regulations, or manuals of St. Peter's or its Medical Staff and (ii) this Policy, the provisions of this Policy shall control.
- (c) This Policy shall apply to all individuals who apply for initial medical staff appointment on or after June 1, 2006.
- (d) This Policy shall not apply to individuals who are appointed to the medical staff on or prior to June 1, 2006 except that it shall apply if, on or after such date, such individuals newly acquire a Financial Relationship with a Competing Entity.
- (e) This policy shall not apply to individuals who are appointed to the medical staff and who have a Financial Relationship with a Competing Entity on or prior to June 1, 2006 except that it shall apply if, on or after such date, the services available in such Entity are expanded.



St. James Healthcare

Sisters of Charity of Leavenworth Health System

January 2, 2007

Dear Medical Staff Member:

At the December 20, 2006 meeting, the Board of Directors of St. James Healthcare adopted a Conflicts of Interest Policy related to financial interests in competitive entities providing patient care services. A copy of that policy is enclosed for your information.

This policy is not intended to prohibit competition. Rather, it attempts to prevent St. James seeing only patients without the means to pay for their care, while not receiving those with the means, so that we may cross-subsidize services and thereby help ensure the viability of our hospital for you, your patients, and the community.

As you will note, the policy requires disclosure of conflicts at time of application for medical staff membership, and immediate disclosure of conflicts when they arise after the application has been approved. Therefore, I am requesting that you provide, in writing, notification of any such conflicts to the Administration Department for the Board's review.


If you have any questions about the policy and its application, please do not hesitate to contact me.

Respectfully,

James R. Kiser II
President and CEO

JRK/lh
Enclosure

400 South Clark Street • P. O. Box 3300 • Butte, MT 59702 406-723-2500

 St. James Healthcare	Policy Number:	I-K 17
	Department or Division:	Medical Staff Services
Date: 12/20/06 Rev. Dates:	Subject:	Conflicts of Interest Resulting from Certain Financial Interests

SUMMARY

It is the policy of St. James Healthcare, consistent with sound business practices and the principles of Organization Ethics prescribed by the 2006 and 2007 Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") Standards RI.1.10 and RI.1.20, to:

- Establish and enforce ethical practices for marketing, admission, transfer, discharge, billing, and other activities involving the provision of healthcare services to the community;
- Be aware of actual and potential conflicts of interest and relationships with physicians and other entities to ensure that the hospital's mission and responsibility to patients and the community are not harmed by professional, ownership, contractual, or other relationships; and
- Address conflicts of interest arising from financial interests held by medical staff members.

Because conflicts of interest do not, in and of themselves, reflect upon the professional qualifications or clinical competence of medical staff members, they are appropriately addressed by a Board of Directors ("Board") policy, rather than by the disciplinary procedures of the Medical Staff.

POLICY

In furtherance of the above policy:

1. A conflict of interest exists when there is a divergence between an individual's private interests and the interests of the hospital, such that an independent observer might reasonably question whether the individual's actions or decisions affecting the hospital or patients might be substantially influenced by those private interests. A conflict of interest includes a direct or indirect financial interest of the individual or his/her spouse, siblings, or children in an entity that competes with the hospital in the provision of any patient care services. This policy relates to such conflicts of interest. The existence of a conflict of interest depends on the situation and not the character of the individual, and is to be determined by the Board.
2. An individual with a conflict of interest shall not have a role in the governance activities of the hospital, or have access to non-public information concerning those activities. This shall include, but not necessarily be limited to, serving as an *ex officio* member of the Board (as an officer of the medical staff or any other capacity), except with respect to matters within the purview of the medical staff in overseeing quality of care, treatment and services delivered by practitioners who are credentialed and privileged through the medical staff and Board process. This prohibition does not apply to individuals having financial interests in (a) a medical office owned and operated exclusively by the individual or his/her group practice and serving only patients of the individual or group practice; or (b) hospital-sponsored joint ventures, because the interests of hospital-sponsored joint ventures are aligned with those of the hospital.

3. A practitioner who has a conflict of interest shall not be eligible to hold medical staff membership or clinical privileges at the hospital if the conflict of interest results in economic favoritism toward the entity in which the practitioner has a financial interest, and the Board determines that the interest is inimical to the interests of the Hospital. Practitioners shall be required to disclose any financial conflict of interest as part of the initial application process, and shall have an on ongoing obligation to disclose it immediately and in writing to the Chief Executive Officer if the conflict arises after the application has been approved. A practitioner who has such an interest, or whose spouse, siblings or children have such an interest, shall bear the burden of showing that it does not result in economic favoritism. In the event of a dispute, the practitioner shall be afforded an opportunity to be heard, in such a manner as may be determined by the Board or the Chief Executive Officer on its behalf. The final determination as to whether a conflict of interest exists within the meaning and intent of the Policy, and whether it is inimical to the interests of the Hospital, shall be made by the Board, in its sole discretion. Because the existence and economic effect of a conflict of interest are not within the purview of the medical staff, the Board's determination shall not be subject to the Hearing and Appeal Procedures of the Medical Staff Bylaws.